

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JOE PICENO,

Case No. 3:21-cv-00156-MMD-CLB

Petitioner,

v.

ORDER

TIM GARRETT, *et. al*,

Respondents.

Petitioner Joe Piceno, a Nevada prisoner, has submitted a pleading styled as a “Rule 60(b) subsequent petition” and a motion for appointment of counsel, with which he is seeking relief from a state court judgment of conviction entered in 1997. (ECF No. 1.) The Court notes that Piceno has had two prior *habeas corpus* proceedings in this Court with respect to the same state court judgment. The first was dismissed as untimely. *Piceno v. LeGrand, et. al.*, Case No. 3:11-cv-00588-RCJ-WGC (ECF No. 9). The second was dismissed as a successive petition. *Piceno v. LeGrand, et. al.*, Case No. 3:14-cv-00545-RCJ-WGC (ECF No. 16). In both cases, the Ninth Circuit Court of Appeals denied Piceno’s request for a certificate of appealability.

Though identified as a pleading seeking relief under Rule 60(b) of the Federal Rules of Civil Procedure, Piceno’s current filing asserts a “federal basis for relief from a state court’s judgment of conviction” and is, therefore, subject to the same requirements as a *habeas corpus* application under 28 U.S.C. § 2254. See *Gonzalez v. Crosby*, 545 U.S. 524, 530-31 (2005). Viewed as such, the pleading is a successive petition, which

1 requires Piceno to seek and obtain leave of the Ninth Circuit before pursuing relief in this
2 Court. *See id.* at 531-32 (citing 28 U.S.C. § 2244(b)(3)).

3 Piceno has not secured an order from the Ninth Circuit authorizing this action as
4 required by § 2244(b)(3). Therefore, this Court is without jurisdiction to consider the
5 petition submitted herein. *See Burton v. Stewart*, 549 U.S. 147, 153 (2007).

6 It is therefore ordered that this case is dismissed for lack of jurisdiction. The Clerk
7 of Court shall separately file the petition and motion for appointment of counsel (currently
8 docketed as ECF Nos. 1-1 and 1-2). The Clerk of Court shall also enter judgment against
9 Piceno and close this case.

10 It is further ordered that Piceno's motion for appointment of counsel is denied as
11 moot.

12 It is further ordered that a certificate of appealability is denied.

13 DATED THIS 7th Day of April 2021.

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16 MIRANDA M. DU
17 CHIEF UNITED STATES DISTRICT JUDGE
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